

-9-

REMARKS

Applicant's oral election is hereby confirmed with the cancellation of the appropriate claims hereinabove.

The Examiner has objected to the drawings. Amendments have been made hereinabove to the specification, in order to avoid such objections. Such amendments conform the specification to the drawings, as originally filed. Thus, no new matter has been added.

The Examiner has further objected to Claims 4, 5 and 14 due to informalities. Applicant has clarified such claims to avoid such objections.

The Examiner has rejected Claims 1, 3, 4, 10 and 14 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner begins by taking issue with the following claim language as being indefinite: "relatively significant damage," "significant risk," and "substantially combat." Applicant has deleted such language from the independent claims to avoid such rejection with respect to such limitations. While the terms "substantially combat" and "relatively significant damage" have been completely removed from the claims, the remaining limitations exist in some dependent claims. Applicant asserts that the following claim language is to be read according to the plain and ordinary meaning thereof, in view of dictionary definitions, and in further view of the definitions provided in the specification, as set forth below:

- "Significant risk": In other words, since it is not known whether a virus of an unknown risk level may pose a significant risk to the overall system, such a virus is generally treated as effectively having a high risk level. (see pg. 12, lines 21-23)

-10-

The Examiner continues by taking issue with the terms “damage,” “risk,” and “combat” in Claim 1. The terms “damage” and “combat” have been deleted from the claims to avoid such rejection. In addition, applicant respectfully asserts that the claimed “risk” in all of the pertinent claims is to be read with regards to its plain and ordinary meaning, as evidenced by dictionary definitions, etc. For example, one dictionary definition of “risk” is “the possibility of suffering harm or loss” (*The American Heritage® Dictionary of the English Language, Fourth Edition*).

The Examiner continues by taking issue with the terms below which may still exist in dependent claims. In response, applicant asserts that the following claim language is to be read according to the plain and ordinary meaning thereof, in view of dictionary definitions, and in further view of the definitions provided in the specification, as set forth below:

- “Relatively long duration”: Deleted from all claims.
- “Relatively significant scope”: From steps 406 and 408, process flow moves to step 416 in which a determination is made regarding whether the infection caused by the current virus was widespread or had a relatively significant scope. That is, it is determined whether the infection is considered to have infected a significant portion of the overall system. The criteria used to characterize an infection as widespread or having a significant scope may generally vary. For example, the infection may be considered to be widespread if a larger percentage of the overall system was infected than was previously infected by other viruses. Alternatively, the infection may be considered to be widespread if more than a particular percentage, *e.g.*, more than fifty percent, of the overall system was infected by the current virus. (see pg. 17, lines 8-16)
- “Significant risk”: In other words, since it is not known whether a virus of an unknown risk level may pose a significant risk to the overall system,

-11-

such a virus is generally treated as effectively having a high risk level. (see pg. 12, lines 21-23)

- “Relatively significant damage”: Deleted from all claims.

The Examiner continues by taking issue with the terms “duration,” “scope,” “risk,” and “damage.” In response, applicant asserts that the following rejected claim language is to be read according to its plain and ordinary meaning, in view of dictionary definitions, etc. For example, illustrative dictionary definitions as provided below by *The American Heritage® Dictionary of the English Language, Fourth Edition*:

- “Duration”: A period of existence or persistence
- “Scope”: Breadth or opportunity to function
- “Risk”: The possibility of suffering harm or loss
- “Damage”: Harm or injury to property or a person, resulting in loss of value or the impairment of usefulness

The Examiner continues by taking issue with the terms “significant new infection,” “significant risk,” and “substantially combat” in Claims 10 and 14. In response, applicant emphasizes that such claim language has been either deleted (thus avoiding the rejection), or the rejection of such claim language has already been addressed hereinabove.

The Examiner concludes by taking issue with the terms “infection,” “risk,” “combat,” and “damage,” with respect to Claims 10 and 14. In response, applicant emphasizes that such claim language has been either deleted (thus avoiding the rejection), or the rejection of such claim language has already been addressed hereinabove.

The Examiner has rejected Claims 1, 2, 5-11, 14 and 15 under 35 U.S.C. 103(a) as being unpatentable over Hill et al. (U.S. Patent No. 6,088,804) in view of Hodges et al. (U.S. Patent No. 6,035,423). Such rejection is deemed avoided in view of the clarifications made hereinabove to the claims.

-12-

Specifically, the Examiner has objected to Claims 3, 4, 12, and 16 as being dependent upon a rejected base claim, but also stated that such claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. All of the independent claims have been amended substantially in such manner (with some exceptions to avoid 112 issues).

Thus, all of the independent claims are deemed allowable. Moreover, the remaining dependent claims are further deemed allowable, in view of their dependence on such independent claims.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1351 (Order No. NAI1P311/01.037.02).

Respectfully submitted,
Zilka-Kotab, PC.

Kevin J. Zilka
Registration No. 41,429

P.O. Box 721120
San Jose, CA 95172-1120
408-505-5100